

CSD 1160 [05/15/03]

Name, Address, Telephone No. & I.D. No.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In Re EDWARD S. PALMA and ESTARLINA N. PALMA, Debtors.	BANKRUPTCY NO. 10-06826-LA7
BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP, and its successors and/or assignees, Moving Party	RS NO. KAM-1
EDWARD S. PALMA and ESTARLINA N. PALMA, Debtors, and GREGORA A. AKERS, Trustee, Respondent(s)	

MOTION FOR RELIEF FROM AUTOMATIC STAY
 REAL PROPERTY **PERSONAL PROPERTY**

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below:

1. A Petition under Chapter 7 11 12 13 was filed on 4/25/10.
2. Procedural Status:
 - a. Name of Trustee Appointed (*if any*): **GREGORA A. AKERS**
 - b. Name of Attorney of Record for Trustee (*if any*): _____
 - c. (*Optional*) Prior Filing Information:
 Debtor has previously filed a Bankruptcy Petition on: _____.
 If applicable, the prior case was dismissed on: _____.
 - d. (*If Chapter 13 case*): Chapter 13 plan was confirmed on _____ or a confirmation hearing is set for _____.

Movant alleges the following in support of its Motion:

1. The following real property is the subject of this Motion:
 - a. Street address of the property including county and state:
2006 MOUNT BULLION DRIVE
CHULA VISTA, CA 91913
 - b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved):
Single family residence
 - c. Legal description of property is attached as Exhibit A.

- d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.
- e. *Fair market value of property as set forth in the Debtors' Schedules: \$315,000.00.
- f. *Nature of Debtors' interest in the property:

Owners

- 2. The following personal property is the subject of this Motion (*describe property*):
 - a. Fair market value of property as set forth in the Debtors' Schedules: \$_____.
 - b. Nature of Debtors' interest in the property:
- 3. *Fair market value of property according to Movant: \$_____.
- 4. *Nature of Movant's interest in the property: **Secured Creditor holding a First Note and Deed of Trust on the subject property.**
- 5. *Status of Movant's loan:

a. Balance owing on the date of Order for Relief:	<u>\$357598.37</u>	
b. Amount of monthly payment:	<u>\$1,679.70</u>	
c. Date of last payment:	<u>4/15/2009</u>	
d. If real property,		
i. Date of default:	<u>5/1/2009</u>	
ii. Notice of Default recorded on:	<u>10/2/2009</u>	
iii. Notice of Sale published on:	<u>3/15/2010</u>	
iv. Foreclosure sale currently scheduled for:	<u>4/6/2010</u>	
e. If personal property,		
i. Pre-petition default:	\$_____	No. of months: _____
ii. Post-petition default:	\$_____	No. of months: _____

- 6. (*If Chapter 13 Case, state the following:*)
 - a. Date of post-petition default: _____
 - Amount of post-petition default: \$_____

- 7. Encumbrances:
 - a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages		Post-Petition Arrearages	
		Total Amount - # of Months:		Total Amount - # of Months	
1 st : BAC HOME LOANS	\$357,598.37	\$20,156.40	12	\$5,039.07	3
2 nd : BAC Home Loan Servicing, LP	\$86,000.00				
3 rd :					
4 th :					
Totals for all Liens:	\$443,598.37	\$20,156.40	12	\$5,039.07	3

- b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in the schedules or otherwise known to Movant:
 - See attached page, if necessary.

*Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5.)

8. Relief from the automatic stay should be granted because:
- a. Movant's interest in the property described above is not adequately protected.
 - b. Debtor has no equity in the real property personal property described above and such property is not necessary to an effective reorganization.
 - c. The property is a "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or _____ days as ordered by this court) have passed since the entry of the order for relief in this case, and
 - i. The Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
 - ii. The Debtor/Trustee has
 - (1) not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
 - (2) commenced payments, but such payments are less than the amount equal to interest at a current fair market value on the value of each creditors' interest in the property.
 - d. *Other cause exists as follows (*specify*): See attached page.
The Debtors is surrendering the property as stated in the Debtors' Statement of Intent attached as Exhibit "F."

Movant attaches the following:

1. Other relevant evidence:

Debtors' Schedules as Exhibit "E"
Debtors' Statement of Intent "F"
An Assignment of Deed of Trust as Exhibit "G"

2. (*Optional*) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- Relief from the automatic stay to allow BAC HOME LOANS to enforce its rights and remedies under its Note and Deed of Trust.
- Other: **BAC HOME LOANS requests a waiver of the 14-day stay provided by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.**

Dated: **July 9, 2010**

/S/ KERRY A. MOYNIHAN
[Attorney for] Movant,

SHM/BAC/m64978

* Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5).